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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/081,457	02/21/2002	Anne M. Pianca	98P1021US08	3029

7590 06/07/2002  
PACESETTER, INC.  
15900 Valley View Court  
Sylmar, CA 91392-9221

EXAMINER

EVANISKO, GEORGE ROBERT

ART UNIT	PAPER NUMBER
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3762

DATE MAILED: 06/07/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/081,457	PIANCA ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	George R Evanisko	3762	

-- Th MAILING DATE of this communication appears on the cover sheet with the correspond nce address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 February 2002.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.                      6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Priority***

This application repeats a substantial portion of prior Application No. 09/457277, filed 12/08/99, and adds or deletes additional disclosure not presented in the prior application. Since this application names an inventor or inventors named in the prior application, it may constitute a continuation-in-part of the prior application. Should applicant desire to obtain the benefit of the filing date of the prior application, attention is directed to 35 U.S.C. 120 and 37 CFR 1.78.

It is unclear if the application is a Continuation or a CIP of 09/457277, and the status should be changed accordingly.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 5-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 5, "at least one" is vague since "a ring electrode" can not be located in each of those places (it is suggested to use "one of").

In claim 6, "at least one" is vague since the lead biasing portion cannot be anchored in each of the veins. It is suggested to use "one of".

In claims 9-11, "a first hump and a second hump" are vague since claim 1 contains at least two non-helical bends. Are the humps and bends the same elements or different elements?

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

04 Claims 1, 2, 4, 6, 9, 11, 12, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chastain et al, 5925073, in view of Morris, 6321123 (or Swoyer, 5683445). Since a guidewire is used in Chastain through the lumen, it is inherent that there be a distal opening in the lead (in the alternative, see the 103 rejection below).

Chastain discloses the claimed invention and providing an anchor in the coronary sinus to stabilize the electrode, but does not teach having a tip electrode and canted portion that orients the tip electrode toward the vessel wall. Morris (or Swoyer) teaches that it is known to have a coronary sinus anchor lead have a tip electrode and canted portion that orients the tip electrode toward the vessel wall to provide effective stimulation of the heart. It would have been obvious

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to one having ordinary skill in the art at the time the invention was made to modify the coronary sinus anchor lead as taught by Chastain, with a tip electrode and canted portion that orients the tip electrode toward the vessel wall as taught by Morris (or Swoyer), since such a modification would provide a coronary sinus anchor lead with a tip electrode and canted portion that orients the tip electrode toward the vessel wall to provide effective stimulation of the heart.

Claims 1, 2, 4, 6, 7, 9, 11, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morris et al in view of Chastain et al (5925073).

Morris et al disclose the claimed invention and multiple ways to anchor a lead in the coronary sinus except for the lead having an s-shape with a plurality of bends for the anchoring. Chastain teaches that it is known to use an s-shaped lead with a plurality of bends to anchor a lead in the coronary sinus. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the lead as taught by Morris, with the s-shaped lead with a plurality of bends as taught by Chastain, since such a modification would provide a lead with an s-shape with a plurality of bends to anchor a lead in the coronary sinus.

In the alternative, it would have been an obvious matter of design choice to one skilled in the art to modify the anchoring lead as taught by Morris with the use of an s-shape anchor with a plurality of bends, since applicant has not disclosed that the s-shape with a plurality of bends provides any criticality and/or unexpected results and it appears that the invention would perform equally well with any shape that was non-helical, such as the J-shape or C-shape as taught by Morris for anchoring the lead in the coronary sinus.

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Claims 1, 2, and 4-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swoyer in view of Chastain et al (5925073).

Swoyer discloses the claimed invention to anchor a lead in the coronary sinus except for the lead having an s-shape with a plurality of bends for the anchoring. Chastain teaches that it is known to use an s-shaped lead with a plurality of bends to anchor a lead in the coronary sinus. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the lead as taught by Swoyer, with the s-shaped lead with a plurality of bends as taught by Chastain, since such a modification would provide a lead with an s-shape with a plurality of bends to anchor a lead in the coronary sinus.

In the alternative, it would have been an obvious matter of design choice to one skilled in the art to modify the anchoring lead as taught by Swoyer with the use of an s-shape anchor with a plurality of bends, since applicant has not disclosed that the s-shape with a plurality of bends provides any criticality and/or unexpected results and it appears that the invention would perform equally well with any shape that was non-helical, such as the J-shape or C-shape as taught by Swoyer for anchoring the lead in the coronary sinus.

Claim 5 is rejected under 35 U.S.C. 103(a) as obvious over Morris et al in view of Chastain et al as applied to claim 1 above. Since the defibrillation electrodes of Morris are located on and past the bend and are not solid, they are ring electrodes located on and after the bends and will not impede steerability.

In the alternative, Morris in view of Chastain et al discloses the claimed invention except for the ring electrode located on, before, or after the bends. It would have been obvious to one

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having ordinary skill in the art at the time the invention was made to modify the anchoring lead as taught by Morris in view of Chastain et al, with the use of a ring electrode on, before or after the bends since it was known in the art that ring electrodes are included anywhere on leads to provide bipolar sensing and pacing or additional sensing and pacing.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chastain et al in view of Morris (or Swoyer).

Chastain in view of Morris (or Swoyer) discloses the claimed invention except for the ring electrode located on, before, or after the bends. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the anchoring lead as taught by Chastain in view of Morris (or Swoyer), with the use of a ring electrode on, before or after the bends since it was known in the art that ring electrodes are included anywhere on leads to provide bipolar sensing and pacing or additional sensing and pacing.

Claims 10 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morris in view of Chastain as applied to claims 6 and 1 above.

Morris in view of Chastain discloses the claimed invention except for the humps being in different geometric planes. It would have been an obvious matter of design choice to one skilled in the art to modify the anchoring lead as taught by Morris in view of Chastain with the humps in the anchor being located in different geometric planes, since applicant has not disclosed that providing the humps in different geometric planes provides any criticality and/or unexpected results and it appears that the invention would perform equally well with any location of the

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humps, such as the humps being located in the same plane as taught by Morris in view of Chastain to anchor the lead in the coronary sinus.

Claims 10 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chastain et al in view of Morris (or Swoyer) as applied to claims 6 and 1 above.

Chastain in view of Morris (or Swoyer) discloses the claimed invention except for the humps being in different geometric planes. It would have been an obvious matter of design choice to one skilled in the art to modify the anchoring lead as taught by Chastain in view of Morris (or Swoyer) with the humps in the anchor being located in different geometric planes, since applicant has not disclosed that providing the humps in different geometric planes provides any criticality and/or unexpected results and it appears that the invention would perform equally well with any location of the humps, such as the humps being located in the same plane as taught by Chastain in view of Morris (or Swoyer) to anchor the lead in the coronary sinus.

Claims 3, 8, and 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morris et al (or Swoyer) in view of Chastain as applied to claims 2, 7, and 1 above.

Morris (or Swoyer) in view of Chastain discloses the claimed invention except for the lead having a distal opening to receive a guidewire, the stylet having a tapered portion, the second bend located in the range of 0.15-0.7 inches from the first bend (Swoyer does disclose this), and the lead having a textured region of ePTFE or porous material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the medical electrical lead as taught by Morris (or Swoyer) in view of Chastain with the lead having a distal opening to receive a guidewire, the stylet having a tapered portion, and the lead having a



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textured region of ePTFE or porous material (such as silicone rubber, polyurethane, or ceramic) since it was known in the art that medical electrical leads have a distal opening to receive a guidewire to allow the lead to be positioned in the body, that leads use a stylet with a tapered portion to allow the stylet to fit in the narrow distal end of the lead and to position the lead, and that leads have a textured region of ePTFE or porous material to allow the lead to anchor in the body.

In addition, it would have been an obvious matter of design choice to one skilled in the art to modify the medical electrical lead as taught by Morris (or Swoyer) in view of Chastain to include ePTFE as the textured region and the second bend being located 0.15-0.7 inches from the first bend, since applicant has not disclosed that ePTFE and the second bend being located 0.15-0.7 inches from the first bend provides any criticality and/or unexpected results and it appears that the invention would perform equally well with any biocompatible textured material or any location of the second bend, such as silicone rubber, polyurethane or ceramic for allowing the lead to anchor in the body as taught by Morris (or Swoyer) in view of Chastain and in view of one having ordinary skill in the art for allowing the lead to anchor in the coronary sinus or such as the J-shaped and C-shaped location of the bends as taught by Morris in view of Chastain to allow the lead to anchor in the coronary sinus.

Claims 3, 7, 8, and 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chastain in view of Morris (or Swoyer) as applied to claims 2, 6, and 1 above.

Chastain in view of Morris (or Swoyer) discloses the claimed invention except for the lead having a distal opening to receive a guidewire, the stylet having a tapered portion, the first

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and second bend located in the range of 0.15-0.7 inches from the distal end and first bend, and the lead having a textured region of ePTFE or porous material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the medical electrical lead as taught by Chastain in view of Morris (or Swoyer) with the lead having a distal opening to receive a guidewire, the stylet having a tapered portion, and the lead having a textured region of ePTFE or porous material (such as silicone rubber, polyurethane, or ceramic) since it was known in the art that medical electrical leads have a distal opening to receive a guidewire to allow the lead to be positioned in the body, that leads use a stylet with a tapered portion to allow the stylet to fit in the narrow distal end of the lead and to position the lead, and that leads have a textured region of ePTFE or porous material to allow the lead to anchor in the body.

In addition, it would have been an obvious matter of design choice to one skilled in the art to modify the medical electrical lead as taught by Chastain in view of Morris (or Swoyer) to include ePTFE as the textured region and the first and second bends being located 0.15-0.7 inches from the distal end and first bend, since applicant has not disclosed that ePTFE and the first and second bends being located 0.15-0.7 inches from the distal end and first bend provides any criticality and/or unexpected results and it appears that the invention would perform equally well with any biocompatible textured material or any location of the bends, such as silicone rubber, polyurethane or ceramic for allowing the lead to anchor in the body as taught by Chastain in view of Morris (or Swoyer) and in view of one having ordinary skill in the art for allowing the lead to anchor in the coronary sinus or such as the S-shaped or zig-zag shaped lead location of the bends as taught by Chastain in view of Morris (or Swoyer) to allow the lead to anchor in the coronary sinus.

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*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George R Evanisko whose telephone number is 703 308-2612. The examiner can normally be reached on M-F 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on 703 308-5181. The fax phone numbers for the organization where this application or proceeding is assigned are 703 306-4520 for regular communications and 703 306-4520 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-1148.

^ C  
George R Evanisko  
Primary Examiner  
Art Unit 3762

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GRE  
June 4, 2002